

# Advanced Workers Compensation

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KDOL - Division of Workers Compensation



# Overview

- Recap of WC 101 – A few points to remember
- Basics of the court process
- A more expansive look into key issues in Workers Compensation
- Ombudsman services

# Work Comp 101

- Workers Compensation is a defense for employers against law suits and provides swift benefits for injured workers.
- Most Kansas employers are required to have coverage, but some are exempt.
- Work injuries fall into three categories:

Accidents  
Repetitive Trauma  
Occupational Disease

# Work Comp 101

- Injured workers must notify the employer within certain time limits
- Employers must immediately provide injured workers with the K-WC 27-A form
- Employers must file a claim with their carrier
- Workers receive medical and income benefits

# Court Process

When issues arise in a claim that cannot be resolved, any party to the claim (usually the claimant) may apply for a hearing with DOL. The basic steps are:

- Application for Benefits, K-WC E-1
- Notice of Intent (7-day demand)
- Application for Preliminary Hearing, K-WC E-3
- Schedule and hold the prelim
- Multiple preliminary hearings may be held on multiple topics

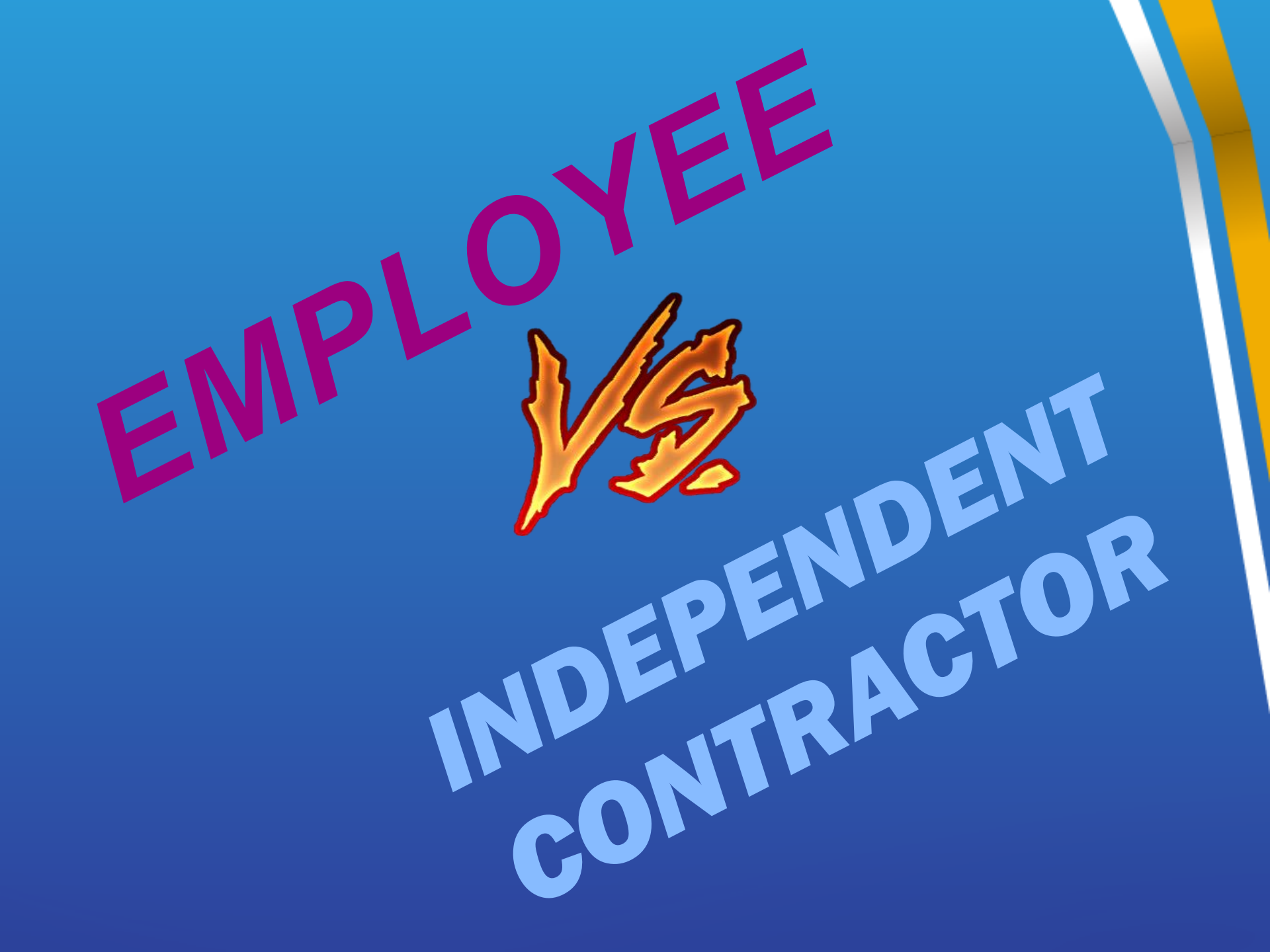
# Court Process

After a Preliminary Hearing is held, certain findings are subject to review by the Workers Compensation Appeals Board on issues concerning:

- Whether the injury was accidental
- Whether the injury arose out of and in the course of employment
- If the accident was the prevailing factor
- Whether notice was timely given
- Whether certain defenses apply

# Court Process

- Board decisions on preliminary hearings may not be appealed to the KS Court of Appeals.
- Preliminary rulings are subject to review at a regular hearing.
- Rulings from regular hearings may be appealed to the Board, which may be appealed to the KS Court of Appeals, which may be appealed to the KS Supreme Court.



**EMPLOYEE**

**VS**

**INDEPENDENT  
CONTRACTOR**



# Employee vs. Independent Contractor

## KDOL form K-WC 126: Independent Contractor or Employee Fact Sheet

Generally speaking, an independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to the result of his work.

# Employee vs. Independent Contractor

KDOL form K-WC 126: Independent  
Contractor or Employee Fact Sheet

The court further noted in the case that "the right-of-control test is not, however, an exclusive test to determine the relationship – other relevant factors also are to be considered."

KS Sup. Court, Snyder v. Lamb, 191 Kan. 446

# Employee vs. Independent Contractor

## KDOL form K-WC 126: Independent Contractor or Employee Fact Sheet

- In another case: “an independent contractor represents the will of his employer only in the result of his work and not as to the means by which it is accomplished.”

KS Sup. Court, Evans v. Board of Education of Hays, 178 Kan. 275

# Employee vs. Independent Contractor

## KDOL form K-WC 126: Independent Contractor or Employee Fact Sheet

- And, “It is not the exercise of direction, supervision or control over a workman which determines whether he is a servant or an independent contractor, but the right to exercise such direction, supervision or control.”

# Employee vs. Independent Contractor

KS Insurance Department:

## AFFIDAVIT OF EXEMPT STATUS UNDER THE WORKERS' COMPENSATION ACT

- The nature of the contract between you and the contractor shows you are independent from the contractor. Is there a written contract?
- The contractor exercises very little control over the details of your work or independence. You exercise control over most of the details of the work. Do you create plans or specifications for the job and set your own work hours?

# Employee vs. Independent Contractor

KS Insurance Department:

## AFFIDAVIT OF EXEMPT STATUS UNDER THE WORKERS' COMPENSATION ACT

- You are engaged in a distinct occupation or business for others. Do you work for someone other than the Contractor, for competitors of the Contractor? Does your business have a logo or uniform?
- Yours is the kind of occupation where the work is usually performed by a specialist without supervision and not under the direction of the contractor.
- Your occupation requires special skills, license, education or training.

# Employee vs. Independent Contractor

Common occupations subject to this question:

- Truck drivers
- Home health providers
- Custodial service providers
- Church ministers
- Construction trades
- Salespersons

# Coverage Verification

## Coverage and Compliance Unit

<https://www.dol.ks.gov/wc/injuries-at-work>  
under Services for Employers

- Monitors and assists employers to ensure that employers fulfill two requirements under the Workers Compensation Act:
  1. the requirement to secure workers compensation benefits for employees
  2. the requirement to file reports of alleged work accidents





# Coverage Verification

## Coverage and Compliance

### So, what if you don't?

- Failure to file a statement of insurance may result in an order to cease business in KS.
- \$2,000 civil penalty for each act of fraud or abuse.
- Misdemeanor or felony criminal charges.
- \$25,000 or more penalty for intentional failure to secure payment of work comp.
- Repeated failure to report injuries to the state = \$250 penalty per violation.





# Medical Service Fees

Who pays the bill?

Insurer

or

Employer self-pay

# Medical Service Fees

## Who pays the bill?

- K.S.A. 44-501b: ... the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act
- K.S.A. 44-505: ...act shall apply to all employments wherein employers employ employees within this state except that...(*exceptions*)
- K.S.A. 44-510h(a): It shall be the duty of the employer to provide the services of a health care provider...as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

# Medical Service Fees

## Who pays the bill?

- K.S.A. 44-532(b): ...employer shall secure the payment of compensation to the employer's employees by insuring in one of the following ways:
  - Insuring with an insurance carrier authorized in Kansas
  - Self-insurance
  - Group-funded workers compensation pool
- K.S.A. 44-557(a): ...the duty of every employer to make or cause to be made a report to the director of any accident, or claimed or alleged accident,...within 28 days, after the receipt of such knowledge, if the personal injuries...are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn...

# Medical Service Fees

## Who pays the bill?

- K.S.A. 44-559a:
  - (a) [*paraphrased*] Each insurer issuing a policy may offer deductibles
  - (b) The insurer shall pay all or part of the deductible amount, ...and seek reimbursement from the insured employer for the applicable deductible amount.
- K.S.A. 44-5,120: Fraudulent or abusive acts or practices
  - (b) This section applies to:
    - (2) employers subject to the requirements of the workers compensation act;
    - (4) any person, corporation, business, health care facility...that renders medical care, treatment or services in accordance with the provisions of the workers compensation act...

# Medical Service Fees

## Who pays the bill?

- Unless employer is self-insured, all benefits must be paid by the insurer or TPA.
- Exempt employers may still be liable for the payment of benefits. They are not subject to The Act and may be sued in a civil action.

# Ombudsman Services

- Informative assistance on workers compensation statutes, requirements, procedures, resources, benefits, docket status, etc.
- Provided to workers, employers, attorneys, agents, adjusters and more.
- Presentations
- Mediation

# Questions



# Contact Information

Department of Labor

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[www.dol.ks.gov](http://www.dol.ks.gov)